

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of New     )  
Rules I, II, III, IV, V, and VI pertaining     )  
to Wildlife Habitat Noxious Weed     )  
Grant Program     )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 13, 2018, at 2:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Headquarters Building, 1420 East 6th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than February 2, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

3. REASON: House Bill 434 of the 2017 legislative session, codified in Title 87, chapter 5, part 8 of the Montana Code Annotated, establishes the Wildlife Habitat Improvement Program that makes funding available to qualified applicants to address encroachment, management, and eradication of noxious weeds in priority wildlife habitat to restore wildlife habitat to benefit priority wildlife species. Specifically, the statute allows the department to expend money to restore, rehabilitate, improve, or manage areas of land as wildlife habitat through controlling or eradication of noxious weeds and improved grazing practices. Funding for the Wildlife Habitat Improvement Program is primarily from the Pittman-Robertson Federal Aid in Wildlife Restoration Act. These federal funds are restricted to specific wildlife conservation activities and require U.S. Fish and Wildlife Service (USFWS) approval prior to awarding funds. One purpose of these administrative rules is to assure that funding proposals meet the minimum eligibility requirements for consideration by the USFWS.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS In addition to the definitions provided in 87-5-802, MCA, the following definitions apply to this subchapter:

(1) "Measurable objective" means an anticipated response in vegetation that will be measured to evaluate the effectiveness of a treatment to restore, rehabilitate, improve, or manage land as wildlife habitat through noxious weed management.

(2) "Priority habitat" means plant communities or settings that provide a unique, high value habitat, important to one or more priority wildlife species.

(3) "Priority wildlife species" means species of conservation concern or game species that are recognized by the state of Montana for their ecological, economic, or recreational values.

(4) "Project area" means land comprising treatments and the area where benefits are anticipated, such as a watershed, ecological unit, or other defined area.

(5) "Project sponsor" means the local, state, or national organization, either public or private, administering a project.

(6) "Treatment areas" means specific sites where noxious weed management treatments occur.

(7) "Weed management strategy" means a planning document that provides direction for identifying, prioritizing, and treating noxious weeds.

(8) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE II ELIGIBLE EXPENDITURES (1) Expenditures of grant and required non-federal matching funds may only be used for biological or mechanical control of noxious weeds, purchases and application of approved herbicides, seed purchases and application of seed; and grazing costs as a component of an overall integrated noxious weed management plan, which includes the following:

(a) specified goods limited to herbicides and additives, biological control agents, or materials required for restoration, reseeding, or prescribed grazing management; and

(b) specified services limited to herbicide application; biocontrol agent release; seedbed preparation, seeding, and seedling maintenance; and installation of prescribed grazing infrastructure.

(2) All expenditures of grant and matching funds shall be documented with original invoiced receipts.

(3) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE III APPLICATION PROCEDURE (1) Grant proposals will be solicited annually on dates established by the department.

(2) Proposals with incomplete information may be rejected.

(3) The applicant may request assistance from the department in completing the application. The department will provide such assistance, the level of which will be determined by availability of staff and funds.

(4) The department will review and provide analysis to the advisory council regarding adherence to eligibility and application requirements. The advisory council will review, rank, and recommend proposed projects and funding according to this subsection. Advisory council recommendations will be submitted to the department for final review and determination of funding. The applicant will receive written notification from the department of the action taken on the proposal.

(5) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE IV GRANT APPLICATIONS (1) Grant applications must address how projects would restore, rehabilitate, improve, or manage land as wildlife habitat through noxious weed management, and must contain the following criteria:

- (a) the name, address, and telephone number of the project sponsor, project manager, and liaison (if different than manager);
- (b) the title or name of the proposed project;
- (c) the total grant amount requested;
- (d) the location and size (area) of the proposed project and maps depicting the specific location of the project area, ownership of participating lands, and treatment areas;
- (e) a brief description of the history and background of the project;
- (f) a description of priority wildlife species and habitat(s) involved and how the targeted noxious weeds are specifically impacting wildlife habitat functions;
- (g) a description of the need and urgency of the proposed project, including details of how the project would restore, rehabilitate, improve, or manage land as wildlife habitat through noxious weed management;
- (h) a description of the measurable objectives of the project, including acres of priority habitat to benefit from the proposed project;
- (i) a treatment plan as described in (2);
- (j) a funding plan as described in (3);
- (k) a statement that the project sponsor, if the grant receives approval, is willing to enter into a contract with the department for utilization of grant funds and required documentation, reporting, and monitoring; and
- (l) a layout of a monitoring plan as described in (4). The monitoring plan allows the department to analyze how noxious weed management is restoring, rehabilitating, improving, or managing land as wildlife habitat. Monitoring shall provide actual results of the proposed measurable objectives.

(2) The treatment plan must include the following:

- (a) an inventory of the current weed infestation in the project area and surrounding vicinity;
  - (b) a description of native plant life and occurrence in association with weed infestations;
  - (c) a description of causative factors for the weed infestation and how those may be addressed;
  - (d) a description of proposed treatment methods including a schedule of major project phases; a list of herbicides, biological control agents, and cultural methods; acreage estimate of treatments; proportion of infestation to be treated; anticipated follow-up treatment(s);
  - (e) measures to minimize impacts to non-target plant species; and
  - (f) post treatment management to reduce susceptibility to weed invasion.
- (3) The funding plan must include the following:
- (a) a list of partners and their respective non-federal cash commitments sufficient to meet grant matching requirements;

(b) leveraged funds and in-kind contributions that are in addition to the minimum non-federal match requirements; and

(c) signed letters of commitment from funding partners that identify the partner role, the source and amount of funds committed, and other contributions toward the proposed project.

(4) The layout of the monitoring plan must include the following:

(a) documentation of pre- and post-treatment conditions using repeatable quantitative and photographic methods:

(i) for herbicide and cultural treatments, measurements of targeted noxious weeds and native plant life, to be annually conducted at representative treatment locations during the treatment year and three consecutive years post-treatment; and

(ii) for biocontrol methods, three years of post-release sampling to determine occurrence of biocontrol agent. Measurements of targeted noxious weeds and native plant life at representative release locations, during the treatment year and years three and five post-treatment.

(5) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE V GRANT APPLICATION SCORING AND RANKING (1) Prior to scoring by the council, the department will review and provide analysis to the advisory council regarding application completeness and adherence to eligibility and application requirements.

(2) The council will make funding recommendations to the department based upon the final rank scores. The department will make final decisions on which projects will be recommended for funding. Approval of project grant proposals is ultimately at the discretion of the U.S. Fish and Wildlife Service Federal Aid program.

(3) Scoring criteria is the primary guide for ranking applications and for determination of grant viability. Additional factors outside of the scoring criteria may be considered. Applications that meet minimum qualifications will receive a score based on the following criteria:

(a) Proposal involves a noxious weed threat with compelling information on how the infestation directly diminishes the effectiveness of a priority habitat to support one or more priority wildlife species. (0 to 20 pts)

(b) Proposal would significantly reduce or resolve noxious weed threat and support habitat effectiveness over a sizable portion of priority habitat and associated watersheds. Applications that do not include a minimum acreage of priority habitat to benefit from grant funding will receive zero points. (0 to 20 pts)

(c) Project would help implement an established weed management strategy, is technically feasible, and would maintain or restore native vegetation. (0 to 10 pts)

(d) Management of project area addresses the primary spread of noxious weeds to native wildlife habitats (up to 5 pts) while also providing for native plant community health to reduce susceptibility to weed invasion (up to 5 pts). (0 to 10 pts)

(e) Project involves funding commitments from multiple partners (up to 5 pts) and leverages additional funding or in-kind contribution beyond the minimum required (up to 5 pts). (0 to 10 pts)

(f) Project demonstrates an effective collaboration across multiple land ownerships. Cooperative Weed Management Areas, as defined in the Montana State Weed Management Plan, would receive the highest points. (0 to 15 pts)

(g) Project area provides access for public. (0 to 15 pts)

(h) Monitoring plan meets or exceeds requirements as described in [NEW RULE IV]. (0 to 10 pts)

(i) The grant application, including proposal information, funding plan, and monitoring plan, is clear, well organized, and reflects a high likelihood of success for all aspects of the proposed project. (0 to 10 pts)

(4) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE VI GRANTS (1) Successful applicants for grants funded by federal Pittman-Robertson Wildlife Restoration funding are federal grant sub-recipients subject to administrative requirements of the Pittman-Robertson Wildlife Restoration Act, including Title 51 CFR 80.20-160.

(2) Grants may be up to 5 years in duration although funding allocations will be provided on an annual basis; after the first year, annual allocations will be dependent upon satisfactory completion of grant award requirements (implementation and reporting) the previous year.

(3) Grants will be on a reimbursable basis. Reimbursement will be based on documented, eligible expenses up to the amount awarded and in proportion to spending of eligible match.

(4) Minimum criteria to qualify for a grant are listed as follows and serve as a basis for competitive ranking of proposals:

(a) the project must enhance priority habitats for one or more priority wildlife species through control, management, or eradication of noxious weeds;

(b) noxious weed invasion must represent a direct threat to priority habitat function;

(c) the project area must include ecologically important wildlife habitat that is in need of restoration;

(d) the project would have a reasonable probability of treatment effectiveness that includes effective methodology, anticipated plant community recovery, preservation of non-target plant species, post treatment management;

(e) the proposal exhibits a landscape scale approach or benefit;

(f) the project must include a minimum 25% nonfederal match and must meet additional match requirements depending on the funding source of the project. The proposal must describe the source and type of nonfederal match. The match funds may only be spent on eligible grant activities as described in [NEW RULE II]; and

(g) projects must occur in an eligible county as required by the Montana Wildlife Habitat Improvement Act, 87-5-801 through 87-5-808, MCA.

(5) Reports of monitoring results shall be provided to the department by the end of December of each year.

(6) The department may develop standardized monitoring techniques, consistent with these rules.

(7) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA

IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Wildlife Habitat Improvement Program ARM Comments, Attn: Nick Mulvaney, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail FWPNoxiousWeeds@mt.gov, and must be received no later than February 16, 2018.

5. Kaedy Gangstad or another person appointed by the department has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified in person on November 14, 2017.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer

/s/ Martha Williams  
Martha Williams  
Director  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State January 2, 2018.